

ROUTH CRABTREE OLSEN, P.S.

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Attorneys for movant, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW
YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC.,
ALTERNATIVE LOAN TRUST 2006-OA1, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-OA1

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re:

Edward Dasalla Ardales and
Maria Socorro Mercado-Ardales aka Marisu
Mercado Ardales

Debtor(s).

Bk. No. 08-46010-RLE

R.S. No.: JJD-1238

Judge Roger L. Efremsky

Chapter 13

***MOTION FOR RELIEF FROM
AUTOMATIC STAY (REAL PROPERTY)***

Preliminary Hearing:

Date: February 27, 2013

Time: 1:30 PM

Place: U.S. Bankruptcy Court

1300 Clay St.

Oakland, CA 94612

Courtroom 201

1 THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS
2 TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., ALTERNATIVE LOAN
3 TRUST 2006-OA1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OA1
4 (“Movant”) hereby moves this Court, pursuant to 11 U.S.C. § 362, for relief from the automatic
5 stay with respect to certain real property of the Debtors having an address of 921 GRIFFITH
6 LANE, BRENTWOOD, CA 94513 (the “Property”). The facts and circumstances supporting
7 this Motion are set forth in the Declaration in Support of Motion for Relief from Automatic Stay
8 filed contemporaneously herewith (the “Declaration”). In further support of this Motion, Movant
9 respectfully states:
10

11 1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect
12 to the Debtors on October 20, 2008.

13 2. A Chapter 13 Plan was confirmed on February 25, 2010.

14 3. The Debtors have executed and delivered that certain promissory note in the original
15 principal amount of \$453,750.00 (the “Note”). Movant is an entity entitled to enforce the Note.
16 Movant, directly or through an agent, has possession of the Note. A copy of the Note is attached
17 hereto as Exhibit A.
18

19 4. Pursuant to that certain Deed of Trust (the “Deed of Trust”), all obligations (collectively,
20 the “Obligations”) of the Debtors under the Note and the Deed of Trust with respect to the Loan
21 are secured by the Property. A copy of the Deed of Trust is attached hereto as Exhibit B.
22

23 5. All rights and remedies under the Deed of Trust have been assigned to the Movant
24 pursuant to that certain assignment of deed of trust, a copy of which is attached hereto as Exhibit
25 C.

26 6. Bank of America, N.A. services the loan on the Property referenced in this Motion. In the
27 event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a
28

1 discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will
2 be conducted in the name of Movant. Movant, directly or through an agent, has possession of the
3 Note. The Note is either made payable to Movant or has been duly endorsed. Movant is the
4 original mortgagee or beneficiary or the assignee of the Deed of Trust.

5 7. Debtors' Chapter 13 Plan reflects Debtors' intent to surrender property to Movant.

6 8. As of January 11, 2013, the outstanding Obligations are:

Unpaid Principal Balance	\$490,765.70
Unpaid, Accrued Interest	\$92,608.15
Costs	\$5,969.73
Less: Partial Payments	(\$149.52)
Minimum Outstanding Obligations	\$589,194.06

11 9. In addition to the other amounts due to Movant reflected in this Motion, as of the date
12 hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred
13 \$650 in legal fees and \$176 in costs. Movant reserves all rights to seek an award or allowance of
14 such fees and costs in accordance with applicable loan documents and related agreements, the
15 Bankruptcy Code and otherwise applicable law.
16

17 10. The following chart sets forth the number and amount of post-petition payments due
18 pursuant to the terms of the Note that have been missed by the Debtors:
19

<u>Number of Missed Payments</u>	<u>From</u>	<u>To</u>	<u>Monthly Payment Amount</u>	<u>Total Missed Payments</u>
12	February 1, 2009	January 1, 2010	\$2,083.52	\$25,002.24
12	February 1, 2010	January 1, 2011	\$2,239.78	\$26,877.36
12	February 1, 2011	January 1, 2012	\$2,407.76	\$28,893.12
12	February 1, 2012	January 1, 2013	\$2,460.40	\$29,524.80
Less post-petition partial payments:				(\$149.52)

25
26 **Total: \$110,148.00**

1 11. As of the date of this Motion, the Debtor is being evaluated for a loss mitigation option.
2 Additional information regarding such evaluation is available upon request.

3 12. Cause exists for relief from the automatic stay for the following reasons:

4 (a) Movant's interest in the Property is not adequately protected.

5 (b) Debtors' Chapter 13 Plan reflects Debtors' intent to surrender property to Movant.

6 WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the
7 stay and granting the following:
8

9 1. Relief from the stay allowing Movant (and any successors or assigns) to proceed
10 under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain
11 possession of the Property.

12 2. That the Order be binding and effective despite any conversion of this bankruptcy
13 case to a case under any other chapter of Title 11 of the United States Code.

14 3. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

15 4. For such other relief as the Court deems proper.
16
17

18 Date: February 6, 2013

ROUTH CRABTREE OLSEN, P.S.

19 By:  /s/Jonathan J Damen

20 JONATHAN J DAMEN, ESQ.

21 Attorneys for Movant

22 RCO 7021.307011
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